

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JAMES BREWSTER,

Plaintiff,

v.

Civil Action No. 5:08CV11
(STAMP)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

On January 11, 2008, the plaintiff, by counsel, brought the above-styled civil action. The case was referred to United States Magistrate Judge James E. Seibert for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B).

On May 13, 2008, this court affirmed and adopted the magistrate judge recommendation that the plaintiff's application to proceed in forma pauperis be denied. On August 19, 2008, the magistrate judge ordered the plaintiff to pay the required filing fee within fourteen days of the entry of the order. In that order, the magistrate judge advised the plaintiff that failure to pay the prescribed fee within the time allotted would result in the entry of a report recommending dismissal of the plaintiff's complaint. On January 16, 2009, the magistrate judge entered a report

recommending that this action be dismissed for failure to prosecute. To date, no objections or other communications been have filed with this Court.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the plaintiff did not file objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

The magistrate judge found that the plaintiff has not paid the required filing fee after having been ordered to do so. A review of the record indicates that the plaintiff has not paid the required fee, nor has he filed a motion for an extension of time in which to file the fee or otherwise communicated with this Court to explain his reasons for noncompliance. This Court concludes that the magistrate judge's findings are not clearly erroneous, and, accordingly, finds that the plaintiff's complaint should be dismissed for failure to prosecute.

III. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the plaintiff's complaint is DISMISSED without prejudice for failure to prosecute his claim. Further, it is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to counsel of record herein.

DATED: January 27, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE